

**REMARKS**

Claims 13-16 are active in the application.

Claims 13-16 were finally rejected under 35 USC 103(a) as being unpatentable  
5 over Chantre et al. in combination with Racanelli and the admitted prior art. This rejection is traversed.

As explained in the amendment filed May 16, 2003, the Racanelli reference fails to teach a directly aligned extrinsic base region in combination with an implant-mask cap, and the absence of spacers. In the present office action, the Examiner has combined  
10 Chantre, Racanelli and the "admitted prior art". The admitted prior art is defined as an implanting mask cap on top of the T-shaped polysilicon, as well as well-known means of protecting the structure, as well as structures with no spacers around the emitter (see office action at Page 3). Racanelli has been cited as teaching a similar bipolar device to the claimed invention with extrinsic base regions directly aligned with the polysilicon  
15 emitter layer in order to minimize the separation distance between the intrinsic and extrinsic regions. It is noted, however, that Racanelli is not "prior art" in view of the concurrently filed declarations (two identical copies executed by 4 inventors and 2 inventors respectively). As the Examiner will note, the Racanelli reference was cited in a concurrently filed PCT application, and was made of record in the present application;  
20 however, the information disclosure statement filed in this case does not set forth any admission that Racanelli is prior art.

While the applicant's do not agree that the Examiner's stated combination of references would make the claimed invention obvious, the declaration under 37 C.F.R. 1.131 which is executed by the available inventors of the present application (one  
25 inventor, who has already assigned rights to IBM Corporation, is no longer an employee of IBM Corporation) establishes that the invention was both conceived and reduced to practice prior to the filing date of the Racanelli reference. Therefore, Racanelli reference is not viable as prior art under 35 U.S.C. 102(a) or 35 U.S.C. 102(e), or under any other section of the Patent Statute.

30 As correctly noted in the Office Action, Chantre et al. fail to teach direct alignment of the intrinsic base regions and fail to teach the absence of spacers. The same

is true of the "admitted prior art". Moreover, because the office action does not precisely define the nature of the admitted prior art, the applicants do not admit that that the admitted prior art is in fact prior art and challenge the Examiner to identify the admitted prior art more precisely if a rejection is lodged in the next office action. With the  
5 Racanelli reference removed, the Chantre et al. reference, applied alone or in combination with the "admitted prior art" (to the extent there is "admitted prior art"), is unable to support a rejection of any of the pending claims.

In view of the foregoing, it is respectfully requested that the application be reconsidered, that claims 13-16 be allowed, and that the application be passed to issue.

10 Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

A provisional petition is hereby made for any extension of time necessary for the  
15 continued pendency during the life of this application. Please charge any fees for such provisional petition and any deficiencies in fees and credit any overpayment of fees for the petition or for entry of this amendment to Attorney's Deposit Account No. 50-2041 (Whitham, Curtis & Christofferson P.C.).

20 Respectfully submitted,



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